

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1565 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy No :
of the judgement?
 4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? No :

AMBICABEN U MAKWANA

Versus

DIST. SIKSHAN ADHIKARI

Appearance:

MR DAHYABHAI M PATEL for Petitioners
NOTICE SERVED for Respondent No. 1, 4
GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/02/2000

ORAL JUDGEMENT

1. The three petitioners have prayed for a writ of mandamus directing the respondents to grant selection grade to them with effect from 1.7.1981 in view of

various notifications issued by the State of Gujarat from time to time.

2. The petitioners are serving as Teachers in Mahalaxmi Stree Adhyapan Mandir Prayogik Shala. The petitioner No.3 was appointed by the respondent No.2 on 14.6.1957 and worked on various posts. The petitioner No.1 was paid allowance of Rs.20/- per month for performing her duties as Acharya but no selection grade was granted to her nor to remaining two petitioners despite the fact that all the petitioners satisfied all the requirements of Government Notification dated 16.9.1976 (Annexure : A to the writ petition). Subsequently, another notification was issued by the Government of Gujarat on 26.12.1985 (Annexure : B to the writ petition). In the first notification a person claiming selection grade was required to complete 15 years of service and according to second notification person claiming selection grade was required to complete 17 years continuous service on 1.7.1983. The petitioners alleged that they have completed the requisite period of 17 years on 1.7.1983. Accordingly they have prayed for selection grade from 16.6.1970, 4.1.1971 and 14.6.1974 respectively. They made representation to the respondent to grant selection grade but the respondents declined to consider their demand. However, their demand was not rejected but it remained pending. On 13.3.1978 the respondent No.1 recommended to the respondent No.4 that the petitioner No.1 may be given selection grade, but no selection grade was given to this petitioner. The petitioner No.2 also applied on 25.4.1987 to the respondent No.4 while the petitioner No.3 applied to the said respondent on 16.5.1987, but they have failed to consider the same. The last notification issued by the State Government is dated 8.1.1986, Annexure : D. Previous notifications were amended and the word "1.7.1983" was substituted by the word "1.7.1981". In this way according to the latest notification of the Government the claimant should have completed 17 years of service on 1.7.1981. Still no action has been taken on the representations made by the petitioners. Basing their claim on the last notification, Annexure : D, they have prayed that they may be granted selection grade with effect from 1.7.1981.

3. The petition was admitted on 11.4.1988. Interim relief was refused. However, no counter Affidavit has been filed from the side of the respondent till date though a period of about 12 years has elapsed. As such the allegations made in the petition and the annexures filed with the petition were considered.

4. It is for the authorities and not for this Court to decide as to whether the petitioners have fulfilled requisite qualifications for grant of selection grade. This exercise is to be done by the respondents. Disputed question of fact cannot be determined in a petition under Article 226 of the Constitution of India. Learned A.G.P. has contended that in view of subsequent notification, Annexure : G, which was issued within the competence of the State Government no relief can be granted in this writ petition. I am unable to agree with this contention. It is still for the respondents to consider whether in view of the latest notification, Annexure : D, the petitioners have fulfilled the requisite requirements and qualifications for grant of selection grade.

5. Since the representations of the petitioners have not been considered so far by the respondents the petition has to be allowed and is hereby allowed. The respondents, especially, the respondent No.4, are/is hereby directed to consider the representations dated 13.3.1978 of petitioner No.1, dated 25.4.1987 of petitioner No.2 and dated 16.5.1987 of the petitioner No.3 within a period of six weeks from the date of receipt of copy of this Judgment/order, through speaking order and shall communicate the decision in writing to the petitioners whether they are entitled to selection grade from 1.7.1981 or not.

sd/-

Date : February 10, 2000 (D. C. Srivastava, J.)

sas